IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.05.2012

CORAM

THE HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH,

C.R.P (NPD).No.3925 of 2001 and
C.M.P.No.1438 of 2003

A.R.G.Subramaniam .. Petitioner /Tenant

..Vs..

K.N.Sesha Chalam .. Respondent/Landlord

Prayer: This Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, against the order and decreetal order dated 26.09.2001 in R.C.A.No.4 of 1999 on the file the Sub-ordinate Judge(Appellate Authority), Krishnagiri confirming the order and decreetal order dated 30.07.1999 in HRCOP No.2 of 1995 on the file of the District Munsif (Rent Controller), Krishnagiri.

For Petitioner : Mr.T.Arulraj
For Respondent : Mr.M.Venkatachalapathy,SC
for Mr.M.Sriram

O R D E R

This revision is directed against the fair and executable order passed by the learned Rent Control Appellate Authority in R.C.A.No.4 of 1999 dated 28.09.2001 in confirming the eviction order passed by the learned Rent Controller in R.C.O.P.No.2 of 2005 dated 30.07.1999 under Section 10(3) (a) (1) and (3) of Tamil Nadu Buildings (Lease and Rent Control) Act.

2. C.M.P.No.1438 of 2003: This petition has been filed by the revision petitioner under Order 41 Rule 27 CPC to receive the agreement dated 21.10.1981 between the revision petitioner and the respondent and to mark as an Exhibit in the evidence.

3. The revision petitioner was the respondent and the respondent herein was the petitioner before the learned Rent Controller.

4. The case of the petitioner as stated in the petition would be as follows:-

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The petitioner is the owner of the premises. On 21.10.1981, the petitioner received a sum of Rs.10,000/- as advance from the respondent and gave one part for residential purpose and another part for commercial purpose. A lease agreement was entered into on 21.10.1981 between the petitioner and the respondent and as per the terms of the agreement deed executed by the petitioner and the respondent, the building premises shall be enjoyed by the respondent initially for residential purpose and on payment of the balance advance amount of Rs.40,000/- out of the total advance amount of Rs.50,000/- the petitioner should construct the shop portion in the front portion of the building premises. On 21.10.1981 the respondent paid Rs.10,000/- as advance and it was agreed that on payment of the balance amount of Rs.40,000/- the respondent need not pay any amount towards rent as the interest accrued on the advance amount would be adjusted towards the rent. The respondent paid Rs.10,000/- as advance and took delivery of possession of the residential portion of the building premises. After wards on 06.01.1982 the respondent paid Rs.40,000/- as advance and consequently the petitioner constructed the shop portion in the front side and delivered possession of the same for carrying on business. Then the building premises were letout for both residential and non residential purposes and the building premises from a single block. The respondent has been residing in the building premises and as well carrying on business in the name and style of "Karpagam Agencies", since the year 1982. The respondent has been continuing in possession of the building premises as a tenant holding over after the lapse of the period of 4 years and one month for which he was allowed to occupy the building premises on the basis of "no interest for the advance and no rent for the building". After a passage of 13 years, on account of the increase in market value of the building premises and the potentialities of the place on account of the expansion of the town and existence of the bus stand bear the building premises, the petitioned asked the respondent to hold for the fixation of rent by mutual discussion and free agreement. Accordingly, on 09.08.1994 after holding talks, and agreement was reached between the petitioner and the respondent in the presence of mediators. As per the agreement reached on 09.08.1994, the respondent agreed to pay the rent of Rs.5,000/- per month for the building premises and allowed to retain the advance amount of Rs.50,000/-. It was also agreed that if the respondent does not pay the rent for three months continuously, the petitioner is entitled to get possession of the building premises. The original agreement deed dated 09.08.1994 incorporating the above terms and other conditions and executed by the petitioner and the respondent was handed over to the respondent after taking a xerox copy of the same by the petitioner. The respondent having agreed to pay the rent at the rate of Rs.5,000/- per month since the month of August 1994, did not pay any amount thereafter and till this day. The rent due for the months of August 1994 to March 1995 for the period of 8 months comes to Rs.40,000/-. The respondent committed wilful default in

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payment of rent since the months of August 1994. Inspite of repeated oral demands made by the petitioner every month the respondent did not pay the rent due and he evaded by telling one reason or other. There is supine indifference on the part of the respondent and he deliberately and wilfully committed default in payment of rent.On some occasions he even refused to pay the rent. The petitioner has been residing at Kundarapalli village. The petitioner is an active congressman and he wanted in the month of January 1995 to shift his residence to Krishnagiri town in the petition mentioned building premises for better living and to advance the welfare of his children and to set up an office of the Congress(I) Party in the building premises. The petitioner orally demanded the respondent to vacate the petition mentioned building premises on or before 28th February 1955 to facilitate the petitioner to occupy the building premises for residential purpose and as well as to set up Congress Party. The respondent did not bother to take note by the same and refused to vacate the building premises. The petitioner took mediators with him in the first week of March 1995 and requested the respondent to vacate the building premises. The respondent did not heed to their advice and he also refused to pay the arrears of rent. As the petitioner made lawful demands to the respondent, the same was not relished and hence the respondent filed a petition in H.R.C.O.P.No.1 of 1995 seeking fixation of fair rent by levelling false allegations and suppressing the truth. The respondent, while filing the said petition suppressed the agreement, entered into on 9.8.1994 and his his contractual and obligation to pay the rent of Rs.5,000/- per month. As the respondent is determined not to vacate the building premises and not to pay the arrears of rent, of becomes necessary for the petitioner to file the petition for eviction on the grounds of wilful default in payment of rent and for the petitioner's own occupation for the residential purpose and for setting up of Congress(I) Party office. Therefore, the petitioner prayed that this Court may be pleased to order eviction of the respondent from the petition mentioned building premises and direct the respondent to surrender possession of the same to the petitioner with costs.

5. The objections raised by the respondent in the counter statement would be as follows:-

The suit property belongs to the petitioner. It is admitted that the petitioner had not paid any interest for the advance amount of Rs.50,000/- paid by the respondent and the respondent had not paid the rent to the petitioner. The petitioner is a member of the Congress party. The petitioner entered into an agreement forcefully and hence, it is not legally acceptable and that the agreement is a false one. The petitioner did not return the advance amount of Rs.50,000/-. In this circumstance, the previous agreement is still in force. The only chance for the petitioner is to take effective steps to fix fair rent. Since the petitioner is not willing to do so, the respondent himself has taken action for

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fixing the fair rent. The petitioner is already having some other buildings on his own. At the time of filing the petition, the disputed premises is ready for the occupation of the petitioner. In such circumstances, the petitioner stated that the premises is used for the purpose of making office for the congress party is not true. Hence, the respondent prayed for dismissal of the application with costs.

6. The learned Rent Controller had framed the points on the basis of the pleadings and conducted enquiry and had come to a conclusion of dismissing the petition on 23.04.1997. The aggrieved respondent had filed an appeal before the learned Rent Control Appellate Authority in R.C.A.No.3 of 1997 and the said Court, after hearing both parties had allowed the appeal and thereby remanded the said petition to the learned Rent Controller in its order dated 30.3.1999, to conduct fresh enquiry. The learned Rent Controller again conducted the enquiry afresh and came to the conclusion of allowing the petition and thereby an eviction order was passed against the respondent on all the grounds.

7. The aggrieved respondent preferred an appeal before the learned Rent Control Appellate Authority in R.C.A.No.4 of 1999 and the said appeal was heard and the learned Rent Control Appellate Authority had come to a conclusion of confirming the order passed by the learned Rent Controller on 28.09.2001.

8. Now the aggrieved respondent had preferred the revision before this Court challenging the concurrent order passed by the learned Rent Control Appellate Authority passed in R.C.A.No.4 of 1999.

9. During the pendency of this revision, the revision petitioner had filed the petition in C.M.P.No.1438 of 2003 for receiving the agreement entered into between parties on 21.10.1981 as additional evidence.

10. Heard Mr.T.Arulraj, learned counsel for the revision petitioner and Mr.M.Venkatachalapathy,learned Senior Counsel appearing on behalf of Mr.M.Sriram, learned Counsel for the respondent.

11. The learned counsel for the revision petitioner would submit in his argument that the Courts below have erroneously come to a conclusion that the revision petitioner has committed wilful default and the respondent was in need of the premises for his own use and occupation. He would further submit that the courts below did not understand the peculiar relationship in between parties that a sum of Rs.50,000/- was deposited with the respondent and in view of the interest accrued for the said amount, the revision petitioner was continuing to be the tenant without paying any rent. He would further submit that when such relationship was prevailing

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in between the parties, there is no question of payment of rent nor any default in the payment of such rent. He would also submit that the agreement reached in between parties on 21.10.1981 was an unregistered one with the nomenclature usufructuary mortgage and it was not produced before the courts below since the contents of the document was admitted by both parties. He would further submit that the courts below have relied upon the alleged agreement had in between parties on 09.08.1994 in respect of paying a sum of Rs.5,000/- as rent to the said premises keeping the deposited amount of Rs.50,000/- as advance without any proof produced by the respondent. He would also submit that the said document was obtained from the revision petitioner by exercising coercion and the said document would not be valid in law. He would also submit that when the said document was not valid in the eye of of law for want of proof there would not be any relationship of landlord and tenant. He would further submit that the said previous agreement in between parties on 21.10.1981 was not either replaced by the alleged agreement dated 09.08.1994 or by substitution of any agreement by the way of novation so as to create the relationship of landlord and tenant. He would also submit that the said document even though called as usufructuary mortgage and an unregistered document, it can be received in evidence for proving the collateral purpose. He would also submit that if the said document is admitted in evidence, the subsequent agreement stated to have been entered on 09.08.1994 would not sustain in view of the continuance of the relationship in between parties as per the earlier agreement. He would also cite a judgment of Delhi High Court reported in AIR 1971 Delhi 243(J.N.Banerjee v. Soham Lal Bhargava) for the principle that unregistered lease deed can be produced and received in evidence for proving the collateral purpose under Section 49 of the Registration Act. He would also rely upon a judgment of the Hon'ble Apex Court reported in AIR 1981 SC 1937 (Bhaiya Ramanuj Pratap Deo v. Lalu Maheshanuj Pratap Deo and others) for the same principle.

12. He would further submit in his argument that a person who obtained possession on the foot of a void usufructuary mortgage cannot obtain or claim title to the said property, even 12 years period had passed but can claim the right of usufructuary mortgagee he has cited a judgment of this Court reported in AIR 1921 Madras 410 (2) (Sontyanagopala Dasee and others v. Inapatalupula Rami and others) for the said principle. Quoting the aforesaid judgment, he would submit in his argument that the said agreement had in between parties on 21.10.1981 was an unregistered usufructory mortgage, it would create the right in between parties and the usufructory mortgagor can claim the right under the said usufructory mortgage. He would also submit that the said agreement dated 21.10.1981 is therefore, still having the force in between parties of this case.

13. He would also rely upon a judgment of Patna High Court reported in AIR 1959 Patna 164 for the said principle. He would

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further quote a judgment of Rajasthan High Court reported in AIR 1960 Rajasthan (1) (Lakshmi Narain and another v. Kalyan and another) for the principle that a suit for redemption of the property under an unregistered mortgage deed could be filed. Relying upon the said judgment, he would submit in his argument that the parties to the agreement dated 21.10.1981 can enforce their right even though it was an unregistered usufructory mortgage. He would also refer to a judgment of Gujarat High Court reported in AIR 1972 Gujarat 204 (Pandya Vinodrai Ramrai v. Lavar Prabhudas Nathuram(deceased) and others) for the same principle. He would further submit in his argument that the relationship of parties under the said agreement dated 21.10.1981 was admitted and therefore, the said agreement could have been admitted in the evidence even though it was not registered as required under the provisions of Registration Act. He would cite a judgment of the Hon'ble Apex Court reported in AIR 2004 SC 3856 (Virendra Nath Thr. P. A. Holder R.R.Gupta v. Mohd.Jamil and others) to the effect that the oral evidence could be admitted for proving the collateral purpose and the nature of possession of property in dispute even though an unregistered document. He would also submit that the petitioner himself has admitted about the agreement dated 21.10.1981 in the pleadings therefore there would not be any impediment for permitting the petitioner to produce the said document as additional evidence. He would also submit in his argument that the oral evidence can be adduced by both parties as exempted against certain facts which are reduced in writing as per the provisions of Section 91 of Evidence Act. Apart from that, there was no valid consideration stated for entering into a subsequent agreement on 09.08.1994, omitting the earlier agreement dated 21.10.1981. In such circumstance, the subsequent agreement without valid consideration would be void as per the provision Section 25 of the Contract Act. He would also submit that the lease agreement stated to have been entered into between the parties on 09.08.1994 to which the revision petitioner did not admit that it was obtained with the consent but on exercise of coercion cannot also be admitted since it was a registered document and that, it was stated for more than 3 years. In the aforesaid circumstances, the admitted case of parties would go to show that there was an earlier agreement on 21.10.1981 which was an unregistered usufructory mortgage in which Rs.50,000/- has been paid by the revision petitioner for being in possession of the suit property and the same was continued for more than 13 years (even as per the case of the respondent) and therefore, the right created under the said usufructuary mortgage would prevail, over the relationship of land lord and tenant should not have established on the foot of 09.08.1994 document. He would also submit that the said document dated 09.08.1994 was not produced in evidence. Since the oral evidence in respect of a document was not admissible under Section 91 of the Evidence Act, the theory of creation of the relationship of landlord and tenant would not exist in between parties and therefore, it is very much required that the agreement dated

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21.10.1981 may be ordered to be received in evidence. He would also submit that the entire case of the respondent would be demolished, if the said document is admitted in evidence. He would further cite a judgment of the Hon'ble Apex Court reported in AIR 1971 SC 2289 (Fort Gloster Industries Ltd., v. Sethia Mercantile (P) Ltd.,) for the principle that the document required to be in writing cannot be proved other wise without producing the said document in evidence. He would also rely upon the judgment of this Court reported in AIR 1968 Madras 294 (Yasodammal and another v. Tanalei Ammal) for the principle that no relief can be granted on the basis of an unstamped document even though execution was admitted by parties. He would also rely upon a judgment of the Hon'ble Apex Court reported in AIR 1979 SC 154 (Haji C.H.Mohammed Koya v. T.K.S.M.A.Muthukoya) for the principle that the admission given by parties to a suit should be taken as a whole for consideration. He would further submit in his argument by referring to a judgment of High Court of Andhra Pradesh reported in AIR 1967 AP 211 (Abdul Hameed Khan v. Commissioner of Income Tax, Andhra Pradesh) for the principle that the admission given by parties can be withdrawn by producing necessary proof. He would also submit in his argument that there was no relationship of landlord and tenant and he was not liable to pay the rent payable to the premises and the agreement dated 21.10.1981 prevails and there would be no necessity to pay any rent. He would also submit in his argument that the admission given by the revision petitioner cannot be taken as an estoppel or in respect of a fact since that admission was given in ignorance of the legal right. He would also refer to a judgment of Hon'ble Apex Court reported in AIR 1976 SC 376 (Shri Krishan v. Kurukshetra University) for the said proposition. He would further submit that the alleged documents dated 09.08.1994 is not enforceable in law and therefore, it cannot be acted upon. He would further submit that the respondent (petitioner before learned Rent Controller) did not prove the document dated 09.08.1994 so as to establish the landlord and tenant relationship and no evidence was adduced to show that the document was a valid one and any oral evidence adduced would be barred under Section 91 of the Evidence Act and therefore, the case of the respondents that the relationship of landlord and tenant was in existence. He would also submit that the said document dated 09.08.1994 cannot be admitted in evidence in view of the bar under Section 49 of Registration Act and no collateral purpose could be established from the said document. Whereas the validity of the agreement dated 21.10.1981 was not questioned. He would further submit in his argument that the revision petitioner shall stand on his own legs and to prove his case and he cannot rely upon the weakness of the respondent. He would also submit in his argument that the subsequent agreement was not produced nor proved and therefore it cannot act as a complete substitute for the earlier agreement dated 21.10.1994 and therefore it cannot be considered as a novation to the earlier agreement. For that he relied upon a judgment of the Hon'ble Apex Court reported in 1975 AIR SCW 1352 or 3521, he would

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also quote yet another judgment of the Hon'ble Apex Court reported in AIR 2000 (SC) 380 (Lata Construction and others v. Dr.Rameshchandra Ramniklal Shah and another). Therefore, he would submit that the agreement dated 21.10.1981 even though an unregistered document could have been received as additional evidence so as to establish the case of the continued relationship in between parties as usufructary mortgage and mortgagee and the said relationship alone was continued and there was no creation of relationship of landlord and tenant. He would further submit that the said document is very much essential one for pronouncing the orders over the claim of the respondent/plaintiff, seeking for eviction of the revision petitioner. He would therefore submit that the respondent/plaintiff did not establish the case of the relationship of landlord and tenant and there would be no question of any payment of rent payable to the respondent/plaintiff and therefore there would be no wilful default and the respondent/plaintiff remedy would be before the Civil Court for redemption of usufructory mortgage. Therefore, he would submit that the findings of both the courts below even though concurrent, are not in accordance with law and the findings were not in accordance with the evidence adduced in the case and therefore, the said findings of the courts below have to be set aside and the revision be allowed and thereby the revision petition filed before the learned Rent Controller should be dismissed.

14. The learned Senior counsel appearing for the respondents would submit in his argument that the stipulation as mentioned in the document sought to be produced as an additional evidence dated 21.10.1981 in page No.1 of the typed set would show that the period of the said document was only for 4 years one month and thereafter, it would not continue and this would go to show that the relationship in between parties would not also continue, beyond that period. He would further submit in his argument that the said agreement was in between parties for 13 years and the revision petitioner alone convened a panchayat when the respondent/plaintiff had sought for surrendering of possession on payment of the said sum of Rs.50,000/- and the panchayatars have also come to the conclusion that the said amount paid for interest free, in lieu of the rent could be kept as advance and a sum of Rs.5,000/- was agreed to be paid as rent and was entered into between parties in presence of panchayatars and a document was also executed. He would also submit that the revision petitioner was the main cause for entering a substituted agreement in the year 1994 since the respondent demanded possession of the properties. He would further submit that the various pronouncements of Hon'ble Apex Court as well as High Courts as cited by the learned counsel for the respondent/plaintiff would not help the revision petitioner for producing the said document dated 21.10.1981 as additional evidence since he did not opt to produce the said document even on the first enquiry before the learned Rent Controller and thereafter, during the 2nd enquiry after the remand, before the

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learned Rent Controller. He would also submit that the revision petitioner did not opt for producing such a claim in evidence on the second occasion before the learned Rent Control Appellate Authority in R.C.A.No.3 of 1997 and 4 of 1999. He would also submit that the reasons put forth by the learned counsel for the revision petitioner for receiving the said document as additional evidence are not sufficient and they are not in accordance with law, under Order 41 Rule 27 CPC. He would also submit that the said document dated 21.10.1981 was no doubt admitted by the respondent/plaintiff but it was not admissible in evidence and moreover, even it is produced in the evidence, it has been substituted by the subsequent agreement dated 09.08.1994 and therefore, there would not be any right under the said agreement to flow. He would also submit that the revision petitioner has categorically admitted in the counter filed before the learned Rent Controller that the relationship of landlord and tenant under Tamil Nadu Buildings (Lease and Rent Control) Act was admitted. On such admission, the right if any created in the earlier agreement would not exist in between parties. He would further submit that the revision petitioner cannot adduce evidence against his own pleadings and seek relief on that basis. He would also submit in his argument that a new plea cannot be permitted at the revision stage which plea is also contrary to the earlier plea for that he would cite a judgment of this Court reported in 2009(1) CTC 779 (Dhanasekaran v. The A.R.C. School Board) in support of his argument. He would further submit in his argument that the judgment cited by the learned counsel for the revision petitioner that the doctrine of novation would occur when the earlier agreement was substituted by the subsequent agreement. The judgment relied upon by the learned counsel for the revision petitioner reported in AIR 2000 (SC) 380 (Lata Construction and others v. Dr.Rameshchandra Ramniklal Shah and another) and AIR 1995 SC weekly 3521 (M/s.Gujarat Botteling Co. Ltd., and others v. Coca Cola Company and others) would help the respondent only since the subsequent agreement had completely substituted the earlier agreement dated 21.10.1981 and it has also been candidly admitted by the revision petitioner in his evidence as RW1. He would also submit that the said agreement which was substituted by the later agreement dated 09.08.1994, could not be an admissible document to be received in additional evidence. The said document would not in any way help the Court to pronounce the judgment. He would further submit in his argument that this is a simplicitor that revision petitioner was a tenant under landlord who had agreed to pay a sum of Rs.5,000/- per month as per agreement dated 09.08.1994 and the same has been admitted by the revision petitioner in his evidence and admittedly there was no payment of rent from the date of such agreement and therefore, he has to be considered as a willful defaulter. He would further submit that the Courts below have correctly found that the revision petitioner did not pay the rent payable to the demised premises and the subsequent rent has also not been paid for all these years and therefore, the subsequent non-payment of rent would be also

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amounting to willful default. He would also rely upon a judgment of this Court reported in 2009 (2) CTC 595 (K.Karuppiah v. B.Kubendran) for the principle that subsequent conduct of the tenant can be considered for assessing his wilful default. He would also rely upon a similar judgment for the principle that when concurrent findings have been reached by the learned Rent Controller as well as the Rent Control Appellate Authority, the revision court need not interfere in the concurrent findings of the court below under Section 25 of the Act unless there is some perversity or biased attitude on the part of the lower appellate Court. He would further submit in his argument that the revision petitioner as RW1 had admitted in his evidence that he had agreed to pay a sum of Rs.5,000/- towards rent in the said agreement dated 09.08.1994 but he did not pay any rent to the landlord. He would further submit that RW1 has admitted that he did not take any steps to cancel the said agreement nor sent any notice to the respondent/plaintiff that it was compulsorily obtained from the revision petitioner. He would further submit in his argument that the respondent was living in Kundarapalli village which is 7 kilo meters away from Krishnagiri. He would further submit that he had admitted that he had used the front portion as shop and the back portion as godown where he had resided. He would further submit that RW1 had admitted that the respondent/petitioner was having school going children and therefore, he had indirectly admitted that respondent/plaintiff requires premises for his use and occupation. He would therefore submit that the plea of the revision petitioner that the agreement dated 21.10.1981 has to be received as additional evidence cannot be sustained and the rights and liabilities in between parties had come to an end on entering of an agreement on 09.08.1994 in between parties and it was also categorically admitted by RW1. He would also submit that the admission given by the revision petitioner in the counter as well as in evidence as RW1 are categorically and absolutely and there is no ambiguity, in his admission and therefore, the citation referred by the learned counsel for the respondent that the admission must be shown to have complete and such admission can be shown to be wrong cannot be complete. Therefore, the courts below have come to the conclusion that there is a landlord and tenant relationship between parties and the rent was payable to the demised premises from the date of agreement entered on 09.08.1994. He would also submit that the finding of the facts on wilful default and the requirement of premises for the own occupation of the respondent/petitioner, they have also come to a concurrent finding to effect the revision petitioner on the ground of wilful default and own usage and occupation under Section 10(2)(1) and 10(3) of the Act. He would also submit that since there is no perversity or bias in the judgment of both the curt below, the revision petition filed by the revision petitioner may be dismissed after confirming the concurrent judgment of the court below.

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15. I have given anxious thoughts to the arguments advanced on either side.

16. The revision petitioner was the respondent and the respondent herein was the petitioner before the learned Rent Controller.

17. The case of the respondent herein (petitioner before the Rent Controller) was that the demised premises was once given possession to the revision petitioner after receipt of Rs.10,000/- for his usage and to put up front portion at the cost of Rs.40,000/- to be paid by the revision petitioner and accordingly, on payment of such Rs.40,000/-, the respondent/plaintiff had put up construction in front of the said building and left it with the possession of the revision petitioner for being used in his occupation to use as shop in the front portion and to reside in the building portion. It is also the case of the petitioner before the lower Court that the said premises were left with the revision petitioner without payment of any rent and the rent payable for that premises would be adjusted in lieu of the interest for the said amount of Rs.50,000/-. Accordingly, an agreement was entered on 21.10.1981. The said agreement was entered into for 4 years one month. But, however it was prolonged to 13 years from the date of the earlier agreement and therefore, he demanded the surrendering of vacant possession by the revision petitioner and on such demand, the revision petitioner has called for panchayat to be done and in the panchayat, it has been agreed that the said sum of Rs.50,000/- payable by the respondent/petitioner to the revision petitioner should be kept as advance and the revision petitioner has to pay a sum of Rs.5,000/- per month towards rent from that day onwards. The said agreement dated 09.08.1994 nor the earlier agreement dated 21.10.1981 were not produced before the court below. Both the agreements are un registered. The 1st agreement dated 21.10.1981 was an unregistered usufructory mortgage. The 2nd agreement dated 09.08.1994 was a rental agreement for 3 years and therefore, both the documents are compulsorily registerable documents under Section 17 of the Registration Act. In such circumstance, both the parties did not produce any documents before the learned Rent Controller and before the learned Rent Control Appellate Authority for additional evidence on two occasions. But the revision petitioner has come forward with an application to receive the agreement dated 21.10.1981 as additional evidence in this revision to prove that the relationship in between parties had under the said agreement is still prevailing and no such relationship of landlord and tenant is prevailed in between parties.

18. Now it has to be decided whether the said agreement can be received in as additional evidence in this revision and whether the reasons contemplated under Order 41 Rule 27 CPC has been complied with or the document so produced would be helpful to Court to enable the judgment in this revision are to be considered. It was

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an admitted case that there was an agreement entered into between the revision petitioner and the respondent/petitioner on 21.10.1981. There is no dispute in execution of the said document. When we go through various judgments cited by the learned counsel for the revision petitioner, regarding its admissibility, I could see that the said document even though an unregistered document it can be admitted in evidence, for the purpose of proving a collateral purpose. Here, the reason alleged by the revision petitioner was that, if the said document has been produced in evidence it would prove the relationship of mortgagor and mortgagee. For that he had also cited that the relationship of parties can be established even in a case of an unregistered mortgage. Whether there could be any possibility of establishment of the relationship of mortgagor and mortgagee in this case, the admissibility of the said document sought to be provided has to be considered. As already discussed, I could see that an unregistered usufructory mortgage can be admitted in the evidence for the purpose of proving a collateral purpose. Therefore, it is not necessary to list out all the citations cited by the learned counsel for the revision petitioner in support of his argument. As far as this case is concerned, the sole purpose of producing the said document was to establish the relationship in between parties. The petition before the learned Rent Controller was filed by the respondent/petitioner for eviction under Sections 10(2)(1), 10 (3) (1) and (3) of Tamil Nadu Buildings (Lease and Rent Control) Act. Under those two sections, it has been dealt with as to when the revision petitioner has committed wilful default in paying the rent and the said premises are required by the respondent/petitioner for his own use and occupation. In the said case, the respondent would categorically admit in his statement of objection as follows:-

> "3. The relationship of landlord and tenant under the Tamil Nadu Buildings (Lease and Rent) Control Act, is admitted. It is also admitted that the petitioner need not pay interest for the advance Rs.50,000/- and the respondent need not pay the rent. It was a worldlywise agreement for the cashneedy petitioner. It is impermissible in law that the petitioner should get such a huge money as advance 15 years back. Hence the petitioner seeking for enhancement of rent is not justified."

19. The relevant pleadings submitted by the petitioner/land lord was admitted in the evidence when he was cross-examined as RW1, which would run as follows:-

> "மனுதாராரிடம் மாதம் ருபாய் 5000 வாடகை செலுத்த ஒப்புக் கொண்டேன் என்பது சரிதான். ஆனால் அது கட்டாயத்தின் பேரில் ஏற்பட்ட ஒப்பந்தமாகும். மேற்படி ஒப்பந்தம் ஏற்பட்ட தேதி 9.8.94. ஒப்பந்த தேதிக்கு பின்னிட்டு வாடகை எதுவும் செலுத்தவில்லை. மேற்படி ஒப்பந்தத்தை ரத்து செய்ய வழக்கு எதுவும் தாக்கல் செய்யவில்லை. அதற்கான அறிவிப்பு எதுவ ம் கொடுக்கவில்லை.."

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20. Therefore, I could see that the plea raised by the petitioner has been admitted in RW1's evidence. When he himself admitted that there was a landlord and tenant relationship how the revision petitioner can ask for return to the earlier relationship of usufructory mortgagor and mortgagee and to go for filing the suit for redemption by the respondent/plaintiff once again. The admission of RW1 was an absolute admission. However, it was contended that an admission against his case would not be binding upon him. He had categorically admitted in his evidence that he has agreed to pay a rent of Rs.5,000/-. What else is required for evidencing an absolute admission to say that he was still under the claim of right of mortgagee to be in possession. The judgments cited by the learned counsel for the revision petitioner, even though the principles are indisputable, are not applicable to the present fact of the case. The entire relationship of usufructory mortgagor and mortgagee have come to an end when the said rights in between parties have been absolutely substituted by entering into another agreement dated 09.08.1994. Apart from that RW1 was also given categorical admission. In such circumstances, I am of the considered view that the earlier agreement has been substituted by the subsequent agreement. Such inadmissible documents were not produced before the trial court and oral evidence has been adduced in terms of the ingredients of such document and such oral evidence are not barred under Section 91 of the Evidence Act. The oral evidence would be barred under Section 91 of the Evidence Act, when those documents are available and sought to be admitted in evidence. Admittedly, both the documents were not admitted before the courts below.

21. The revision petitioner did not show any reason for not producing the said agreement dated 21.10.1981 before the learned Rent Controller on the 1st occasion and thereafter, during the 2nd occasion when the case was remanded back.

22. Similarly, no application has been filed for receiving these documents as additional evidence on two occasion before the learned Rent Control Appellate Authority, when the cases in R.C.A.No.3 of 1997 and 4 of 1999 were pending. No explanation has been offered for not producing the same before the courts below on 4 occasions. Furthermore, it has not been stated as to how it was required in this case, for enabling the Court to pronounce the judgment. We have already seen that the revision petitioner as RW1 has categorically admitted the relationship of landlord and tenant and the payment of quantum of rent also payable to the demised premises and thus had established the relationship of landlord and tenant agreed by virtue of subsequent conduct of parties. When the parties themselves conducted and made themselves to become landlord and tenant on the agreement dated 09.08.1994 which had completely substituted an agreement had in between parties on 21.10.1981. When novation had taken place, the earlier agreement had in between parties dated 21.10.1981 would be considered as not

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in existence. When such agreement was not in existence then what would be the use of admitting the said document in evidence in order to help the court to pronounce the judgment was not explained by the revision petitioner. Therefore, the documents sought to be produced in C.M.P.No.1438 of 2003 are not entitled to be admitted as additional evidence in this revision.

23. While discussed above, it has been found that the revision petitioner admitted the relationship of landlord and tenant in between parties and he had also admitted that he did not pay the rent payable to the demised premises as agreed by him. We have also seen that the revision petitioner as RW1 had admitted that the quantum of rent agreed to have been paid by him was at Rs.5,000/- per month. He has also admitted that he did not pay the rent from the day of said agreement on 09.08.1994. Admittedly, there was an advance of Rs.50,000/- at the hands of respondent/landlord. The revision petitioner did not opt for adjustment of all the admitted arrears with the said advance amount. However, it could be adjusted to the extent of the said advance sum of Rs.50,000/-. It is a settled law that advance could have been adjusted towards rent and the wilful default could always be ascertained after such adjustments. Admittedly, the agreement was reached on 09.08.1994, the Rent Control proceedings have been initiated in the year 1995 in RCOP No.2 of 1995 and the revision petitioner had himself filed a rent control petition to fix fair rent in RCOP. No.1 of 1995 and subsequently he had withdrawn the said application and the same was dismissed as not pressed. If really, the revision petitioner was not willing to continue the relationship of usufructory mortgagor and mortgagee in between them, he would not have filed a petition for fixation of fair rent in RCOP No.1 of 1995 and sought for fixation of rent at Rs.1,500/- per month.

24. We have also seen that the revision petitioner has also withdrawn the fair rent fixation petition in RCOP No.1 of 1995. Therefore, the revision petitioner was conscious of the fact that he has to pay the rent payable to the landlord. Admittedly, he did not pay the rent and he had also paid fair rent even after adjusting the advance amount paid to the tune of Rs.50,000/-, therefore the revision petitioner is liable to pay the rent payable from 09.08.1994 till this date. It is very much known to the revision petitioner that the eviction petition has been filed for the purpose of evicting him from the premises for the wilful default. The revision petitioner has not come forward to deposit the admitted arrears of rent without pejudice to his case. The rent arrears came to have commenced from 1994 to till this date which is so huge.

25. It is a settled law that the commission of default, even during the proceedings be held as wilful default even though it is at the stage of revision. The judgment of this Court cited by the

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learned counsel for the respondent/petitioner reported in 2009 (2) CTC 595 (K.Karuppiah v. B.Kubendran) would run as follows:-

> "12.Even though R.C.O.P.No.1005 of 1999 was filed in the year 1999 there is no material placed before the Rent Controller that even during the pendency of R.C.O.P.No.1005 of 1999, the tenant had paid the rent for the petition schedule building to the landlord without committing any default. Supine in difference of a tenant in payment of rent is to be taken note of in a petition filed under Section 10(2)(i) of the Act in favour of the landlord as laid down in K.N.Gunalan, represented by his power agent, Parimelazhag v. C.Santhalingam, 1994(1) MLJ 510, as follows:
>
> "The course of conduct as seen will show that the tenant had been supinely indifferent in the matter of payment of rent. The fact that he has been irregular in making payment raising a false plea that he used to pay only in lumpsum once in a few months will show that he has committed default wilfully."

26. As per the aforesaid judgments of this Court, we could understand that the rent payable during the eviction proceedings even after adjustment of the entire advance amount leaving one month advance for a sum of Rs.45,000/- towards arrears of rent. The revision petitioner still liable to pay the rent payable during the eviction proceedings. The said default committed by the revision petitioner is sheerly a wilful default, knowing full well that eviction has been ordered on the ground of wilful default by the courts below and it is pending decision of this Court, no rent has been paid or deposited. The said act of the revision petitioner is amounting to wilful default and the findings of the Court below that the tenant has committed wilful default in payment of rent and liable to be evicted under the said grounds is unassailable.

27. As far as the own use and occupation is concerned, the landlord wanted to occupy the premises to stay at Krishnagiri for giving better education to the children and for accommodating the Political Office of the Congress Party to which he belonged. The said intention of the landlord was not denied. But it was admitted that the landlord has got school going children and education in Krishnagiri would be so nice to any other place in the village where he was living and he is a Congress man. Further, the intention of establishing the office for the Congress party at Krishnagiri is also not mentioned. In the said circumstances the court below have come to a conclusion that the premises in the front building and the premises in the building was required by the landlord for his own use and occupation was also not interfereable. In the said circumstances, the judgment of this Court reported in 2009 (2) CTC 595 (K.Karuppiah v. B.Kubendran) in para 12 cited above, is relevant.

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28. According to the dictum, when Courts below ought to have based their findings purely on evidence without any perversity or bias, such findings should not be interfered in the revision under Section 25 of the Act.

29. For the foregoing discussions, I find no reason to interfere in the eviction order passed by the courts below on the grounds namely wilful default and for own use and occupation under Section 10(2)(1) and 10(3)a(3) of the Act respectively. Therefore, the claim of the revision petitioner to interfere with the findings of the court below is not sustainable.

30. In fine, I am of the considered view that the eviction order passed by the courts below are not interfereable and therefore, they are confirmed and the revision petition filed by the revision petitioner is liable to be dismissed with costs. The application filed in CMP No.1438 of 2003 is also dismissed. Accordingly, the Civil Revision Petition is dismissed with costs and the C.M.P.No.1438 of 2003 is also dismissed with costs. Time for vacating the premises is two months.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssn

To
1. The Sub-ordinate Judge(Appellate Authority),
Krishnagiri.

2. The District Munsif (Rent Controller), Krishnagiri.

1 cc To Mr.M.Sriram Advocate, SR.29845

C.R.P (NPD).No.3925 of 2001 and
C.M.P.No.1438 of 2003

NG (CO)
SRA(24/09/2012)

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